UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Criminal No. 08-10071-RGS**
	)	
	)	
BRIMA WURIE	)	

GOVERNMENT'S SENTENCING MEMORANDUM

On February 25, 2010, within a matter of hours of receiving the case for deliberations, a jury found the defendant guilty of possessing a loaded firearm and ammunition and two counts of drug trafficking. This conviction punctuates the defendant's incredibly violent and lengthy criminal record. The defendant is a career offender and armed career criminal who has, to date, been undeterred from engaging in violent crimes, drug trafficking and gun possession, despite numerous convictions and significant periods of incarceration.

The government requests that the Court impose a sentence of 262 months incarceration. This is not a rote Guidelines recommendation, but a thoughtfully constructed request formulated after taking into account the seriousness and persistence of the defendant's extensive criminal activities over the past fifteen years, his designation as both a career offender and an armed career criminal, the large amount of drugs and the firearm involved in the present case, and the need to deter the defendant, and protect the public, from any further illegal behavior.

SENTENCING GUIDELINES

There are three relevant calculations to consider given the defendant was convicted of both gun and drug possession, and is a career offender. The government sets forth below these calculations:

A. Drug Offense Calculation

Adjusted Offense Level 32 (PSR 46)
Criminal History Category VI (PSR 68)
Advisory Guideline Range of 210-262 months
5 year mandatory minimum sentence (count 2) (PSR 126)
10 year mandatory minimum sentence (count 3)(PSR 126)
Supervised Release of 5 years to life

B. Armed Career Criminal Calculation

Adjusted Offense Level 37 (PSR 54) [1]
Criminal History Category VI (PSR 68)
Advisory Guideline Range of 360 months - life
15 year mandatory minimum sentence (count 1)
Supervised Release of 5 years to life

C. Career Offender Calculation

Adjusted Offense Level 37 (PSR 50)
Criminal History Category VI (PSR 68)
Advisory Guideline Range of 360 months - life
10 year mandatory minimum sentence
Supervised Release of 5 years to life

In consideration of the above calculations, and for the reasons discussed in detail below, the government recommends the Court impose a sentence of 262 months imprisonment, and 5 years of supervised release. This is a reasonable position which balances the lower Drug Offense calculation with the higher Armed Career Criminal and Career Offender calculations.

[1] The offense level calculation is derived, per U.S.S.G. § 4B1.4(B)(2), from the Career Offender offense level (see U.S.S.G. § 4B1.1). Absent this Sentencing Guidelines provision, the defendant's offense level/criminal history calculation -- strictly as an Armed Career Criminal -- would have been 34/VI, placing him in the range of 262-327 months.

BOOKER/3553(a)

The government will analyze factors relevant under 18 U.S.C. § 3553(a) to demonstrate the appropriateness of its recommendation.

I. The Defendant's Criminal History and Characteristics and the Nature and Circumstances of the Instant Offense Dictate a Significant Sentence

Important aspects to consider during sentencing are the history and characteristics of the defendant and the nature and circumstances of the offense. See 18 U.S.C. § 3553(a)(1). Here, there are no compelling facts to support any relief from the Guidelines; rather, his persistent, violent history which qualifies him as both a career offender and an armed career criminal illustrate why a sentence of 262 months is entirely appropriate. Moreover, an examination of the nature and circumstances of the instant offense buttress this recommendation.

A. The Defendant’s Criminal Record and History of Recurrent Violence

The defendant has spent most of his adult years serving significant periods of incarceration and promptly re-offending upon release. His life of crime stemmed primarily from his alignment with a gang from Stonehurst Street in Dorchester, which, between 1998 and 2001, engaged in a violent conflict with members of the Wendover Street gang in Roxbury. See United States v. Brandao, 539 F.3d 44, 47 (2008); Affidavit of Robert Fratalia, at Exhibit 1. During that period, Stonehurst members engaged in murder, non-fatal shootings, and robberies. See Exhibit 1. The defendant and his associates not only waged a brutal war against their rival gang, they terrorized the city of Boston and surrounding areas.[2] See id.

Starting in 1996, the defendant was charged and convicted of stabbing a young man in the back of the head. Not even one year later, he robbed a 15 year-old boy. By 2000, he was

[2] In 2003, 12 Stonehurst members were indicted for racketeering, 13 for racketeering conspiracy, and 13 for violent crimes in aid of racketeering and use of firearms in relation to crimes of violence. In particular, the defendant was indicted and tried for shooting at Eddie Brito on January 30, 2000, murdering Luis Carvalho and shooting Teyean Gunter on February 17, 2000, shooting Hubert Pilet on April 19, 2000, shooting Melvin Andrade on June 25, 2000, and shooting at Gelson Brandao on July 7, 2000. Following a jury trial in 2006, the defendant was acquitted of all charges. See PSR 79.

convicted of assault and battery on a police officer and resisting arrest. Tragically, in 2002, the defendant was driving a car following a shooting, refused to stop for the police, and struck a police officer; when officers attempted to stop the car they believed was dragging their fellow officer, a young woman in the back seat was killed.

After serving a three-year state prison sentence for this last, horrifying crime, the defendant was placed on probation out of Suffolk Superior Court. Astonishingly, rather than using his newly-found freedom to embark upon a new start, free from the violence and crime, he used it to sell crack cocaine and marijuana. Just over one year after his release from prison (and while on probation), he was arrested for the instant case.

1. 1996 Stabbing, Subsequent Assault and Efforts to Intimidate Witnesses

While the defendant avoided compiling a criminal record as a juvenile, he got off to a quick start compiling his adult criminal record upon turning 17. On September 8, 1996, at about 4:40 pm, he punched a woman on Corwin Street in the face and threatened to return with a gun. See PSR 61. At 7:40 pm that evening, the defendant gave a young woman named Sparkle Henderson some gifts. See PSR 58. After he asked for those gifts back, the defendant and his friends got into a fight with Ms. Henderson’s brother and his two friends at 46 Draper Street (Ms. Henderson’s home). See id. The defendant escalated this fight by stabbing Mr. Henderson, nineteen years old, in the back of the head. See PSR 58. By 11:15 pm that night, the defendant called Ms. Henderson repeatedly, stating he could not believe she brought the police to his house and asked her if she was going to drop the charges. See PSR 61.

The following day, the police received a call from a resident at 46 Draper Street, and upon arriving, saw 15-20 young men on the street and sidewalk in front of Ms. Henderson’s home. See PSR 61. That resident stated that the defendant came to discuss the incident from the day before, even though the court had ordered him to stay away from 46 Draper Street and the residents at that address. See id. As a result of his conduct, the defendant was charged with assault and battery with a dangerous weapon (machete), assault with a dangerous weapon (machete), two counts of assault and battery, and witness intimidation. See PSR 58-61.[3] He was sentenced on December 26, 1996 to two and one half years in the house of corrections; that sentence was suspended for two years. See id. Despite this first opportunity to avoid incarceration, the defendant violated the terms and conditions of his probation less than one year later, and was ultimately sentenced to serve 16 months of that sentence. See PSR 62. This is the first of a progression of serious crimes the defendant committed while on probation.

2. 1997 Robbery

On July 13, 1997, just months after receiving a probationary sentence in the above case, the defendant, now 18 years old, was with a group of three other men. See PSR 62.

[3] These offenses were not treated separately ONLY because of the absence of information about whether there were any intervening arrests, even though they represent separate incidents of serious crimes.

Together, they approached two 15-year old boys and asked if they were involved with two young women on Bowdoin Street. See id. One of the men punched one of the teens in the face, while the other three men held the second teen and robbed him of his pager, money, and jewelry. See id. After searching the area, the police found the defendant, and the robbery victim identified him as the person who took his wallet containing $150 from his pocket. See id. When he was booked, the defendant said, “I was there while they were robbing them but I didn’t do it.” See id. The charge of unarmed assault with intent to rob was reduced to larceny from the person, the defendant was again given a suspended jail sentence, and placed on probation for three years. See id. After his arrest for the July 20, 2000 incident described directly below, the defendant was sentenced to two years in jail, to be served after the sentence he received for resisting arrest and assaulting a state trooper. See PSR 63.

3. 2000 Assault and Battery on a Police Officer During a Firearm-Related Incident

On July 19, 2000, the defendant was a passenger in a car stopped by the state police for excessively tinted windows. See PSR 63. When the trooper who stopped the car noticed that the ignition was broken, he asked the driver, Carlos Fernandes, to get out of the car. See id. The defendant was also asked to get out of the car. See id. During a pat-frisk of the defendant, the trooper felt a handgun tucked inside of the defendant’s waistband. See id. The defendant kicked the trooper in the groin and fled; Fernandes ran as well. See id. The following day, the defendant was arrested for assault and battery on a police officer, resisting arrest, and possession of a handgun. See id. Because the defendant escaped with his firearm (which was never recovered), the latter charge was dropped, but the defendant was convicted of assault and battery on a police officer and resisting arrest, and sentenced to two and one-half years and 90 days, respectively. See id. The defendant was released from prison in August 16, 2002. See id.

4. 2002 Death of Evelyn Cepeda and Injury of Boston Police Officer Michael Paillant

Less than one month after being released for the violent crimes described above on a Massachusetts State Trooper, he initiated a car chase which lead to the death of a young woman, and injury to a Boston Police officer.

Shortly before 1:30 a.m. on September 8, 2002, the defendant was driving a white Ford Taurus on Hancock Street on Dorchester. See Statement of Robert Connolly, dated September 8, 2002, p. 2, at Exhibit 2. At that time, the defendant had no driver’s license.

The defendant turned right onto Columbia Road, and then drove over an island to change directions on Columbia Road. See id. Two officers in a marker Boston Police cruiser parked on Columbia Road at a red light observed this erratic driving. See id. The defendant pulled alongside the cruiser at the red light, and the proceeded to drive through the red light. See id. At that time, the police officers turned on their emergency lights to pull the Taurus over. See id. p. 2-3. The defendant did not stop, but rather continued down several streets in the neighborhood at an average speed. See id. As the defendant approached Dunkeld Street, he began to accelerate. See Statement of Michael Paillant, dated September 9, 2002, p. 7, at Exhibit 3.

Officer Michael Paillant, a uniformed officer who happened to be in the area conducting a separate investigation, moved to the center of Dunkeld Street to assist by giving hand and verbal commands to the defendant, yelling “STOP, STOP” to pull the defendant over. See id. p. 6. Realizing that the defendant had no intention of stopping, PO Paillant drew his gun for his own protection and tried to move to the left of the intersection to avoid being hit. See id. at 7. Before PO Paillant could clear the street, the defendant accelerated and struck him, throwing him onto the hood of the car. See id. at 7-8. The defendant continued to drive, taking a right onto Fayston Street. See id. at 9. As he did so, PO Paillant fell off the hood onto the right side of the car, causing his left leg to get caught on the front tire, lacerating his left knee and knocking him backwards. See id.

Other officers in the area who witnessed PO Paillant being struck believed that PO Paillant was either underneath the defendant’s car or being dragged by it. See Statement of Thomas

Taylor, dated September 9, 2002, p. 8-9, at Exhibit 4; Exhibit 2, p. 3. PO Taylor, fearing that PO Paillant would be killed if the car continued to drag him along the street, fired several shots at the defendant's car. See Exhibit 4, p. 8-9.

After the shots were fired, the car stopped momentarily, and the right passenger door opened, but no one got out of the car. See id. p. 10. The car then continued down Fayston Street. See id. p. 9. Officers who began pursuing the car as it turned from Fayston Street to Perth Street found a woman on the ground who had jumped from the vehicle as it was moving. See id. p. 8-9. The car turned onto Quincy Street, and the defendant and other occupants jumped out of the car while it was still moving, and ran toward Dacia Street. See id. p. 12. The officers were able to place the vehicle in park, and found a twenty-five year old woman, Evelyn Cepeda, in the back seat suffering from a gunshot wound. She later died from this injury. See Exhibit 2, p. 4.

The following day, the defendant turned himself in at Boston Police headquarters, claiming that he panicked when he saw the police cruiser from Columbia Road attempting to pull him over. See Statement of Brima Wurie, dated September 9, 2002, p.

7-8, at Exhibit 5. The defendant explained that he was purposefully evading the police because he had no license and was on parole. See id. p. 8. He admitted seeing the uniformed officer on Dunkeld Street, but claimed that he thought that the officer was going to fire his weapon, and stated that he ducked down, unbelievably denying knowing that he struck the officer who was thrown onto the hood of the car he was driving. See id. p. 10-12. According to the defendant, the officer was still standing as he drove the car around him. See id. p. 12.

In a subsequent interview that same day, the defendant admitted he lied to the police during his first statement. He explained that just before he had turned onto Columbia Road from Hancock Street, one of the passengers in the car he was driving, Carlos Fernandes,[4] had gotten out of the car after seeing several Cape Verdeans, gone around the corner, and fired about 9-10 shots at these individuals. See Second Statement of Brima Wurie, dated September 9, 2002, p. 4-5, at Exhibit 6. As Fernandes got back into the car with the black, semi-automatic gun in his hand, the defendant turned onto Columbia Road, where

[4] This is the same individual who was driving the car stopped by the state police on July 19, 2000, described above. At that time, the defendant was a passenger, armed with a gun.

the uniformed officers made their initial observations regarding his erratic driving. Several witnesses and ballistic evidence confirmed the shots fired at the corner of Jerome Street and Cushing Avenue (just one block from Hancock Street, near Columbia Road). See Boston Police Incident Report, dated September 8, 2002, at Exhibit 7.

Ultimately, the defendant was indicted for accessory after the fact to assault by means of a dangerous weapon, accessory after the fact to possession of a firearm, unlicensed operation of a motor vehicle, negligent operation, leaving the scene of an accident involving personal injury, and assault and battery by means of a dangerous weapon (motor vehicle). See PSR 64. The defendant plead guilty to all but the firearm charge, and served a three-year state prison sentence with two years of probation to follow. See id.

5. Probationary Period from May 2006 through September 5, 2007

Despite receiving an acquittal on all federal charges in 2006 (see footnote 2) and wrapping up his state prison sentence for his 2002 case, the defendant barely managed to stay out of trouble for 5 months. Although no charges ultimately issued, on October 18, 2006, Carla Monteiro reported to the Boston Police that she and her family members were gathering at her house to mourn the recent death of a family member. See Boston Police Incident Report, dated October 18, 2006, Exhibit 8. When they asked the defendant to move his car which was blocking their driveway, he reached into the car, grabbed something, placed it in his pocket, and continued to argue with Ms. Monteiro's family members. See id. After getting back into his car, the defendant yelled, "I am going to come back and light this place up" and "I will light this place up." See id. Five days later Ms. Monteiro informed the detective investigating the incident that she would not cooperate with any prosecution of the matter. See id.

Then, shockingly, on what should have been a joyous occasion, the defendant assaulted the mother of his child in the hospital just one day after she gave birth to their daughter. See Boston Police Incident Report, dated July 7, 2007, at Exhibit 9. On July 17, 2007, Yolanda Walker reported to Boston Police that the defendant was angry over the name she selected for their baby. See id. He followed her into the bathroom at the hospital and pushed her, causing her to fall over the toilet and injure her back and leg. See id. Charges issued, but Ms. Walker refused to cooperate with the prosecuting authorities. See PSR 80.

During his probationary period, the defendant was required to verify his address and to find employment. He submitted documentation to make it appear (1) that he was earning money by working for a family member's construction company (RSA), and (2) that he was living at his mother and father's home at 51 Speedwell Street, Dorchester.[5] In reality, he was living and dealing drugs out of 315 Silver Street in South Boston. See PSR 25. It appears that his trafficking was quite lucrative; when the defendant was arrested in the instant case, he was carrying $1275 in cash and the street value of the crack cocaine subsequently recovered at 315 Silver Street[6] was over $20,000 (as

[5] As shown in the PSR, the documentation from RSA shows that the defendant last worked for his family's company in 2003. See PSR 115. The defendant had no legitimate employment in 2007 to account for the large amount of cash he had on him on September 5, 2007. Moreover, Ms. Walker, when interviewed by the probation department, explained that she and the defendant lived together at 315 Silver Street after their baby was born in July 2007, while the defendant continues to deny this. See PSR 95-96

[6] As the video of the search warrant showed (which was played in court during the trial, Exhibit 20), 315 Silver Street was a two bedroom, two bathroom, newly-renovated apartment in South Boston, just off of Dorchester Street.

explained in the Affidavit of Paul Murphy, Jr., filed with the government's Opposition to the Defendant's Motion to Suppress).

B. The Present Case

The government will not go into great detail regarding the facts of this case, as the Court heard three days of testimony regarding the defendant's drug trafficking and gun and ammunition possession; however, several points bear mentioning.

First, at the time of his arrest on September 5, 2007, the defendant was 28-years old and had had extensive involvement with the criminal justice system. His drug dealing was not some one-time, youthful indiscretion. By September, 2007, the defendant had been under continuous criminal justice supervision for 11 years. During that time, he had been convicted of violent crimes in four separate cases, serving several jail sentences and a significant state prison sentence. Fred Wade, the individual who purchased drugs from the defendant on September 5, 2007, told officers that he had bought drugs from the defendant several times. See PSR 14.

Second, the defendant was not the typical street-level dealer. More often than not, street-level drug transactions involve a few small rocks of crack cocaine, each usually .2 grams. Here, the defendant sold Mr. Wade **6.4 grams** of crack cocaine. See PSR 13. Mr. Wade revealed that the defendant would not sell less than an “8-ball”, slang for 3.5 grams of crack cocaine. See PSR 14. Furthermore, the defendant had over 215 grams of crack cocaine at his home, along with all of the paraphernalia needed to cut, weigh, and package those drugs, worth over $20,000 on the street. See PSR 25-26.

Third, the defendant conducted his drug trafficking out of the house where he lived with his six-week old baby and his baby’s mother. See PSR 24-26. His total disregard for their safety is astounding. It goes without saying that drug trafficking is a dangerous profession, inextricably intertwined with violence. Drug stashes are often the targets of robberies and home invasions. It is not surprising then that the defendant kept a loaded 9mm firearm in the same room as his drugs. See PSR 26.

Fourth, those involved in the criminal justice system (judges, probation officers, prosecutors, defense attorneys) so frequently see defendants who grew up impoverished, who had absent parents (often incarcerated or drug abusers), little to no support at home, and who dropped out of school, leaving them limited options for meaningful employment. While these factors never excuse criminal behavior, they often explain how such defendants end up in the criminal justice system. **None** of those factors apply to the defendant. The defendant comes from an intact family with two very successful parents. His father, now retired, was a dean at the Massachusetts Institute of Technology. See PSR 86. His mother is a secretary at Hanscomb Airforce Base. See PSR 87. Moreover, his siblings, ages 38 to 22, have careers in finance and education. See PSR 88-91.

What all of this boils down to is that based on his age, education, upbringing, and prior history with the courts, the defendant knew better, but actively chose to sell the drugs which add to the violence and misery of so many neighborhoods in the city of Boston.

II. A Guidelines Sentence will Deter the Defendant and Afford the Public Adequate Protection from Further Crimes

To date, nothing has stopped the defendant from committing crimes. He started his career of illegal activities in 1996 not with a minor motor vehicle offenses or a trespass, but at full speed by stabbing a young man in the back of the head. See PSR 58-61. The suspended jail sentence he received for this offense did little to prevent his return to violent crime, as he participated in robbing two teenaged boys at knifepoint less than one year later. See PSR 62. He was given yet another opportunity to avoid jail with a suspended sentence. Just shy of completing his probationary period for the above two cases, the defendant was caught with a gun during a traffic stop, and took extreme measures to avoid arrest by kicking the state trooper in the groin and fleeing the area. See PSR 63. Finally, the defendant was forced to serve jail time for assaulting the trooper and resisting arrest, and for violating his probation in his first two cases. See id.

Sadly, the two and one-half year jail sentence had no effect upon the defendant, except perhaps to make him more concerned with getting caught in the future. This lead to a tragic result in 2002, when he was driving the get-away car after his friend, Carlos Fernandes, shot at some rival Cape Verdean gang members. See PSR 64; Exhibits 2-7. Not wanting to pull over for the police who were stopping him for nothing more than his erratic driving, he mowed down a Boston Police Officer standing in the middle of the road trying to assist. See id. Because he believed his fellow officer was being dragged by the defendant's car, another officer attempted to stop the defendant by shooting at the car. See id. A twenty-five year old woman in the back seat of the car was stuck by a bullet and killed. See id. It is a gross understatement to say that the defendant's actions set into motion a tragedy of enormous proportions.

Yet still, the loss of a young woman's life did not seem to register. After having served three years in prison for striking the police officer, among other things[7], the defendant once again had an opportunity to set his life straight. After approximately 16 months from his release from prison and while on probation, he was arrested in this matter. As discussed above, his drug sale to Mr. Wade on September 5, 2007, was not a one-time relapse to his life of crime, it was his way of life, his profession. The fact that he was still under the court's supervision meant little to the defendant, except that he had to take extra measures to hide his drug trafficking.

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[7] During this time the defendant was awaiting trial on the federal charges described above.

Probation, jail, and prison have failed to serve as disincentives to the defendant. The only remaining option is a significant federal prison sentence which will keep the defendant off of the streets. See United States v. Smith, 505 F.3d 463, 471 (6th Cir. 2007) (affirming above guidelines sentence where prior incarcerations were “obviously not sufficient to comply with the purposes of § 3553(a)(2)”); United States v. Tilley, 964 F.2d 66, 75 (1st Cir. 1992) (affirming upward departure based on prior lenient treatment by state courts); United States v. Hernandez, 896 F.2d 642, 645 (1st Cir. 1990)("A defendant undermines the integrity of the criminal justice system when he commits a crime while ... under its supervision and control”).

III. The Defendant’s Status as a Career Offender is Controlling

The defendant is the epitome of a career offender; he is not someone whose record just barely makes the cut for this designation, but someone who is a persistent, violent, gun-toting drug dealer with ample predicate convictions. As such, he should be sentenced at or near the maximum sentence based on Congress's express intent. See 28 U.S.C. § 994(h) (career offenders should be sentenced “to a term of imprisonment at or near the maximum term authorized.”). Courts have articulated this policy decision time and again, noting that it is not negated by the Booker decision. United States v. Lovely, 2009 U.S. App. LEXIS 6221, Docket No. 08-1371, at **2 *(1st Cir., Mar. 26, 2009) (recognizing that, despite “considerable leeway” now granted sentencing courts, section 3553(a)(5) requires consideration of policy statements issued by the Sentencing Commission and that those policy statements “following the mandate to the Commission in 28 U.S.C. s. 994(h) to ‘assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term’ for career offenders as defined in the statute”); United States v. Stevens, 2007 U.S. App. LEXIS 24041, Docket No. 07-1466, at **2 (7th Cir., Oct. 2, 2007) (in affirming sentence imposed upon career offender, Court noted that “United States v. Booker, 543 U.S. 220 (2005), does not disturb s. 994(h) or [U.S.S.G.] s. 4B1.1”); see also United States v. Norflett, 922 F.2d 50, 53 (1st Cir. 1990) (with respect to career offenders, Congress left the Sentencing Commission “precious little room to maneuver, specifically directing the Commission to ‘assure that the Guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for [career offenders]'"); United States v. Jackson, 30 F.3d at 199, 204 (1st Cir. 1994).

While Section 994(h) is not a mandatory directive that deprives the Court of authority to impose a sentence below the low end of the advisory Guideline range, it is an express Congressional policy judgment that must be taken into account with several of the sentencing factors set out in 18 U.S.C. s. 3553(a).

IV. Conditions of Supervised Release

The government recommends a period of supervised release of five years. During his supervised release, the defendant should be required to maintain full-time employment. In addition, at least for the first year of his supervised release, a curfew should be in place.

Respectfully submitted,

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Dated: January 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Gretchen Lundgren
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